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No. 82-1623

In the Supreme Court of the United States

OCTOBER TERM, 1982

AMERICAN AIRLINES, INC., PETITIONER

v.

BRANIFF AIRWAYS, INCORPORATED, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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QUESTIONS PRESENTED

1. Whether the district courts continue to have jurisdiction over matters and proceedings in bankruptcy following this Court's decision in *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, No. 81-150 (June 28, 1982).

2. Whether the local emergency rule adopted by the district court at the direction of the Judicial Council of the Fifth Circuit for the limited referral of bankruptcy matters to bankruptcy judges is a valid exercise of the district court's authority.

3. Whether the local emergency rule is constitutional in light of this Court's decision in *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, *supra*.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
Argument	5
Conclusion	18

TABLE OF AUTHORITIES

Cases:

Color Craft Press Ltd., In re, 27 Bankr. 962	6
Crowell v. *Benson*, 285 U.S. 22	14
DeCosta v. *Columbia Broadcasting System, Inc.*, 520 F.2d 499, cert. denied, 423 U.S. 1073	16
Hansen, In re, 702 F.2d 728	6
Heckers v. *Fowler*, 69 U.S. (2 Wall.) 123	16
Kaiser, In re, No. 83 Civ. 1384 (S.D. N.Y. Apr. 11, 1983)	6
Kimberly v. *Arms*, 129 U.S. 512	16
La Buy v. *Howes Leather Co.*, 352 U.S. 249	14
Matlock Trailer Corp., In re, 27 Bankr. 318	6
Miner v. *Atlass*, 363 U.S. 641	14
Moody v. *Martin*, 27 Bankr. 991	6
Northern Pipeline Construction Co. v. *Marathon Pipe Line Co.*, No. 81-150 (June 28, 1982), aff'd, 12 Bankr. 928	2, 7, 8, 9, 10, 14, 15, 17
Northland Point Partners, In re, 26 Bankr. 860	6
Otero Mills, Inc. v. *Security Bank & Trust*, 28 Bankr. 386	6
Peterson, Ex parte, 253 U.S. 300	13
QI Corp., In re, 28 Bankr. 647	6
United States v. *Raddatz*, 447 U.S. 667	15
White Motors Corp. v. *Citibank, N.A.*, No. 82-3638 (6th Cir. Apr. 1, 1983)	6, 12, 13, 14, 16

Constitution, statutes and rules:

U.S. Const. Art. III	2, 8, 10, 11, 13, 16
Bankruptcy Reform Act of 1978, Pub. L. No. 95-592, 92 Stat. 2549	2

Constitution, statutes and rules—Continued Page

Section 238(a), 92 Stat. 2667 ..... 4, 11
Section 241(a), 92 Stat. 2668 ..... 3, 4, 12
Sections 401-411, 92 Stat. 2682-2688 4
Section 402(b), 92 Stat. 2682 ..... 4, 11
Section 404(a), 92 Stat. 2683 ..... 4, 11, 13
Section 404(b), 92 Stat. 2683 4
Section 405(a), 92 Stat. 2685 4
Continuing Resolution Act, Pub. L. No. 97-276, Section 101(a), 96 Stat. 1186 6
28 U.S.C. 1331 3
28 U.S.C. 1332 4
28 U.S.C. 1334 ..... 3, 4, 7, 11, 12
28 U.S.C. (Supp. V) 1471 ..... 4, 11
28 U.S.C. (Supp. V) 1471(a) 3, 7, 8, 11, 12
28 U.S.C. (Supp. V) 1471(b) 3, 7, 8, 11, 12
28 U.S.C. (Supp. V) 1471(c) 8, 9, 10, 11
28 U.S.C. 2071 ..... 5, 12, 13
Bankruptcy Code, Section 105(a), 11 U.S.C. (Supp. V) 105(a) 4, 13
Bankr. R. 927 ..... 5, 13, 14
Fed. R. Civ. P.:
Rule 53 ..... 13, 14
Rule 83 ..... 13, 14

Miscellaneous:

Administrative Office of the United States Courts, *1982 Annual Report of the Director* (preliminary ed. 1982) 1
H.R. 6957, 97th Cong., 2d Sess. (1983) 6
1A C. Sands, *Sutherland Statutory Construction* (4th ed. 1973) 12

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INTEREST OF THE UNITED STATES

The United States has a strong interest in the resolution of this case on behalf of the public interest in a viable bankruptcy system. The Administrative Office of the United States Courts, *1982 Annual Report of the Director* 8, 10 (preliminary ed. 1982) showed that at the close of the year there were more than 700,000 bankruptcy estates—100,000 adversary proceedings—currently pending, and that new bankruptcy estates were being commenced at the rate of more

than 10,000 per week. As these figures suggest, any lapse of bankruptcy jurisdiction on a nationwide basis would result in severe economic dislocation. Moreover, a lapse of jurisdiction would idle the entire existing bankruptcy system for which Congress has appropriated substantial funds and would result in a denial of substantive rights that Congress has provided through bankruptcy legislation. Thus, the United States has a strong interest in supporting the maintenance of a functioning bankruptcy system and in defending its validity.

STATEMENT

In *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, No. 81-150 (June 28, 1982) (*Marathon*), this Court partially invalidated the jurisdictional provisions of the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549, holding that Article III prohibited vesting the bankruptcy courts with jurisdiction to decide the state law claim involved there. The Court stayed its decision until December 24, 1982.

In light of the broad public interest in a viable bankruptcy system, and in anticipation of Congress' inability to enact remedial legislation before this Court's stay of its *Marathon* decision expired, the Judicial Conference of the United States instructed the Director of the Administrative Office of the United States Courts to provide the Judicial Council of each circuit with a proposed rule addressed to the question of bankruptcy jurisdiction that would take effect if Congress failed to act in time. The proposed rule was submitted by the Judicial Council for the Fifth Circuit for adoption by the district courts of the circuit,

and was duly adopted as a Local Rule by the United States District Court for the Northern District of Texas (see Pet. App. 28-33), effective December 25, 1982. At the direction of the Judicial Councils of the other circuits, the rule has now been adopted in the same or similar form by all the district courts of the United States. The rule provides, *inter alia*, for the reference of bankruptcy cases to the bankruptcy courts, subject to withdrawal by the district court, and limits the powers that can be exercised by the bankruptcy judges (see Pet. App. 29-31). It is an interim measure designed to permit the bankruptcy system to continue without disruption under jurisdictional grants remaining in the law as limited by *Marathon*, pending congressional action. The rule will expire when Congress enacts appropriate remedial legislation or on March 31, 1984, "whichever first occurs" (Pet. App. 29).

This controversy arises out of the reorganization in bankruptcy of Braniff Airways, Inc., in the United States District Court for the Northern District of Texas. Petitioner moved to revoke the district court's reference to the bankruptcy judge pursuant to the local rule, arguing both that the district court itself lacked bankruptcy jurisdiction after *Marathon* and that, in any event, the rule was unconstitutional (Pet. App. 5). The district court denied the motion. It ruled that bankruptcy jurisdiction remains in the district courts pursuant to 28 U.S.C. (Supp. V) 1471(a) and (b), enacted by Section 241(a) of the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2668, because those subsections were not invalidated by *Marathon* (Pet. App. 6-7), or, alternatively, pursuant to 28 U.S.C. 1334, 1331, and 1332

(Pet. App. 8-10).[1] In addition, the court noted that, under the transition provisions of the Bankruptcy Reform Act,[2] the structure of the old Bankruptcy Act continues to exist through March 31, 1984, and that this structure is available to be utilized for the adjudication of bankruptcy cases and proceedings (*id.* at 10-11).

Turning to the specifics of the challenged local rule, the district court concluded that the rule was a "necessary" and "appropriate" measure to enable the courts to implement the substantive provisions of the Bankruptcy Code. The court concluded that the rule was duly promulgated pursuant to statutory authority afforded by 11 U.S.C. (Supp. V) 105(a),[3]

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[1] 28 U.S.C. 1334 provides:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of all matters and proceedings in bankruptcy.

The section was amended by Section 238(a) of the Bankruptcy Reform Act of 1978 (92 Stat. 2667), to provide for appellate bankruptcy jurisdiction by the district courts; however, that amendment is not scheduled to take effect until April 1, 1984. See Section 402(b) of the Bankruptcy Reform Act of 1978, 92 Stat. 2682.

[2] These transition provisions are found in Title IV of the Bankruptcy Reform Act of 1978 (92 Stat. 2682-2688). Under Section 404(a), the district courts continue to be "courts of bankruptcy" for purposes of the Act until April 1, 1984, and under Section 404(b) the terms of sitting bankruptcy referees (or "judges") are extended until that date. 92 Stat. 2683. Under Section 405(a), 92 Stat. 2685, all cases commenced under Title 11 and certain related cases are referred to bankruptcy judges, who are to exercise the jurisdiction conferred by Section 241(a), 92 Stat. 2668 (now codified at 28 U.S.C. (Supp. V) 1471).

[3] Section 105(a), as amended by Section 101 of the Bankruptcy Reform Act of 1978, provides that the "bankruptcy

Bankr. R. 927,[4] and 28 U.S.C. 2071, which empowers all courts established by Act of Congress to "prescribe rules for the conduct of their business" (Pet. App. 11-12). The court also found that the rule's adoption was well within the inherent equitable powers with which the courts are clothed (*id.* at 12-14). The court emphasized that under the local rule the bankruptcy judge would not decide "any matter which could not constitutionally be decided by an non-Art. III judge" in light of *Marathon*, but that the district court itself would make the final determination in such matters (Pet. App. 15).

The court of appeals affirmed the judgment of the district court "essentially for the reasons stated in its memorandum opinion" (Pet. App. 1), adding (footnote omitted):

> [I]n particular * * * we conclude that 28 United States Code § 1471(a) and (b) were not invalidated by the *Marathon* decision, but if they were, nevertheless, the jurisdictional grant of United States Code 1334 remains effective during the transitional period.

ARGUMENT

Petitioner contends (Pet. 9-29) that the jurisdiction invoked by the bankruptcy court in this case is invalid for several reasons. This contention does not warrant review by this Court.

1. At the outset, we note that there is no merit to petitioner's contention that the Court should grant

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court may issue any order * * * necessary or appropriate to carry out the provisions of [Title 11]."

[4] Bankruptcy Rule 927 authorizes the district courts to adopt local rules establishing bankruptcy procedures that are not inconsistent with the general bankruptcy rules.

review here in order to alleviate "confusion" (Pet. 3) or "uncertainty" (Pet. 10) in the lower courts. The two other courts of appeals to consider the question have reached decisions in accord with the decision below. *White Motors Corp.* v. *Citibank, N.A.*, No. 82-3638 (6th Cir. Apr. 1, 1983); *In re Hansen*, 702 F.2d 728 (8th Cir. 1983).[5] Moreover, the only district court decision to which petitioner can point as holding that the interim emergency rule is invalid (*In re Matlock Trailer Corp.*, 27 Bankr. 318 (M.D. Tenn. 1983)), as well as two of the unreversed bankruptcy court decisions cited (see Pet. 9 n.9), have been implicitly reversed by the Sixth Circuit in *White Motors Corp.* v. *Citibank, N.A.*, *supra*, slip op. 11, 15-21. There are numerous district court decisions holding the rule valid.[6]

The validity of the local rule, and hence the continuation of a viable bankruptcy system, thus appears to be well settled in the lower courts. Both Congress, in appropriating substantial funds for the system,[7] and this Court, in issuing new Bankruptcy Rules on April 25, 1983, effective August 1, 1983, have further

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[5] The issue is also pending in the Second Circuit in *In re Keene Corporation and GAF Corporation*, No. 83-3013.

[6] See, *e.g.*, *In re Kaiser*, No. 83 Civ. 1384 (S.D. N.Y. Apr. 11, 1983); *In re QI Corp.*, 28 Bankr. 647 (E.D. N.Y. 1983); *Moody* v. *Martin*, 27 Bankr. 991 (W.D. Wis. 1983); *Otero Mills, Inc.* v. *Security Bank & Trust*, 28 Bankr. Rep. 386 (D. N.M. 1983); *In re Color Craft Press Ltd.*, 27 Bankr. Rep. 962 (D. Utah 1983) (en banc); *In re Northland Point Partners*, 26 Bankr. 860 (E.D. Mich. 1983).

[7] See, *e.g.*, The Judicial Appropriation Act, 1983, Title IV, H.R. 6957, 97th Cong., 2d Sess. 42 (1983), as enacted by the Continuing Resolution Act, Pub. L. No. 97-276, Section 101(a), 96 Stat. 1186.

contributed to the efficient functioning of the bankruptcy system under the local rule. Granting certiorari here would have the unfortunate effect of reintroducing, pending this Court's decision, the confusion over the validity of the present bankruptcy system that the decisions of the Fifth, Sixth and Eighth Circuits have substantially alleviated.

2. Moreover, petitioner's challenges to the decision below are without merit. Petitioner first contends (Pet. 18-23) that even the district courts lack bankruptcy jurisdiction in light of *Marathon*. This contention is wrong on two counts; the district courts have bankruptcy jurisdiction under 28 U.S.C. (Supp. V) 1471(a) and (b) and under 28 U.S.C. 1334.

a. Petitioner erroneously asserts (Pet. 12-14) that this Court in *Marathon* struck down as unconstitutional the grant of bankruptcy jurisdiction to the district courts contained in 28 U.S.C. (Supp. V) 1471(a) and (b). But the question of the *district courts'* jurisdiction under the 1978 Bankruptcy Reform Act was not even in issue in *Marathon*.[8] The plurality concluded only that "the broad grant of

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[8] The district court's order in *Marathon*, which was appealed directly to this Court, had dismissed the adversary proceeding instituted by Northern Pipeline against Marathon arising from a state law contract claim on the ground that "the delegation of authority in 28 U.S.C. § 1471 to the bankruptcy judges * * * is an unconstitutional delegation of Article III judicial power to a nontenured Article I court." 12 Bankr. 928, 956 (D. Minn. 1981). The question presented to this Court, according to the plurality opinion, was "whether the assignment by Congress to *bankruptcy judges* of the jurisdiction granted in § 241(a) of the Bankruptcy Act of 1978 * * * violates Article III of the Constitution." *Marathon, supra*, slip op. 1 (emphasis added).

jurisdiction to the bankruptcy courts contained in § 241(a)[9] is unconstitutional." Slip op. 37. The plurality opinion stated (*id.* at 36-37):

> We conclude that § 241(a) * * * has impermissibly removed most, if not all, of "the essential attributes of judicial power" from the Art. III district court and has vested those attributes in a non-Art. III adjunct. Such a grant of jurisdiction cannot be sustained as an exercise of Congress' power to create adjuncts to Art. III courts.

By finding that the power was "impermissibly removed" from the Article III district court, the plurality opinion certainly suggests that it was properly vested in the district courts by 28 U.S.C. (Supp. V) 1471(a) and (b) in the first place. In any event, "the broad grant of jurisdiction to the bankruptcy courts," which the Court concluded was invalid, is found entirely in subsection (c), which transfers to the bankruptcy court "all of the jurisdiction conferred * * * on the district courts."

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[9] The jurisdictional grant of Section 241(a), as codified in 28 U.S.C. (Supp. V) 1471, provides:

> (a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.
>
> (b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11.
>
> (c) The bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts.

The footnote that follows in the plurality opinion, dealing with the question of severability, indicates even more clearly that the Court's invalidation of the statute is limited to the jurisdictional grant to the new bankruptcy courts contained in 28 U.S.C. (Supp. V) 1471(c). The plurality remarked (*Marathon, supra*, slip op. 37 n.40; emphasis added):

> It is clear that, at the least, the new *bankruptcy judges* cannot constitutionally be vested with jurisdiction to decide this state-law contract claim against Marathon. As part of a comprehensive restructuring of the bankruptcy laws, Congress has vested judisdiction over this and all matters related to cases under title 11 in a single non-Art. III court, and has done so pursuant to a single statutory grant of jurisdiction. In these circumstances we cannot conclude that if Congress were aware that the grant of jurisdiction could not constitutionally encompass *this and similar claims*, it would simply remove the jurisdiction of the bankruptcy court over these matters, leaving the jurisdictional provision and adjudicatory structure intact with respect to *other types of claims*, and thus subject to Art. III constitutional challenge on a *claim-by claim basis*. Indeed, we note that one of the express purposes of the Act was to ensure adjudication of all claims in a single forum and to avoid the delay and expense of jurisdictional disputes. * * * Nor can we assume, as THE CHIEF JUSTICE suggests, post, at 2, that Congress' choice would be to have this case "routed to the United States district court of which the bankruptcy court is an adjunct."

This footnote explains that the plurality's discussion of severability did not concern the question whether jurisdiction over bankruptcy matters contin-

ues in the *district courts*, as petitioner asserts (Pet. 12-13); rather, it focused on the question whether jurisdiction over core bankruptcy proceedings, which were not involved in *Marathon*, continues in the *bankruptcy courts*, in circumstances where, because of Article III limitations, the bankruptcy courts could not continue to exercise jurisdiction over certain related proceedings, such as the state-law contract claim involved in *Marathon*. Thus, in footnote 40 the plurality declined to withdraw "the jurisdiction of the *bankruptcy court* over these matters [*i.e.*, certain related proceedings that require Article III courts]," while leaving the *bankruptcy court's* jurisdiction "intact with respect to other types of claims [*i.e.*, core bankruptcy proceedings or related proceedings that do not require Article III courts]." The plurality refused to sever these two facets of the "*single* statutory grant of jurisdiction" (*ibid.*; emphasis added), namely, the grant of jurisdiction to the *bankruptcy court* in 28 U.S.C. (Supp. V) 1471 (c), principally because "one of the express purposes of the Act was to ensure adjudication of all claims in a single forum * * *." Accordingly, the court invalidated all of the derivative jurisdiction given to the *bankruptcy court* in Section 1471(c) and affirmed the district court's judgment dismissing the action. Justice Rehnquist's concurring opinion further evidences that the Court invalidated only subsection (c) (*Marathon, supra*, slip op. 4; emphasis added):

> I would * * * hold so much of the Bankruptcy Act of 1978 as enables a *Bankruptcy Court* to entertain and decide Northern's lawsuit over Marathon's objection to be violative of Art. III of the United States Constitution. Because I agree with the plurality that *this grant of au-*

> *thority* is not readily severable from the *remaining grant of authority to the Bankruptcy Courts* under § 241(a), * * * I concur in the judgment.

In short, the Court in *Marathon* did not address the severability of the initial grant of jurisdiction to the district courts in 28 U.S.C. (Supp. V) 1471 (a) and (b) from the delegation of that jurisdiction to the bankruptcy courts in subsection (c). Nothing in *Marathon* suggests that the Court struck down the bankruptcy jurisdiction of the district courts on the ground that it was not severable from the jurisdictional grant to the bankruptcy courts that suffered from Article III problems.

b. Assuming *arguendo* that this Court did invalidate the entire jurisdictional grant of Section 241(a) of the Bankruptcy Reform Act of 1978 codified in 28 U.S.C. (Supp. V) 1471, the district courts nonetheless have original jurisdiction of "all matters and proceedings in bankruptcy" under 28 U.S.C. 1334. While Section 238(a) of the 1978 Act amends Section 1334 by eliminating the old language and granting the district courts "jurisdiction of appeals from all final judgments, orders and decrees of bankruptcy courts," the amendment does not take effect until April 1, 1984, the date on which the new bankruptcy courts created by the Bankruptcy Reform Act of 1978 were to be finally established. See Section 402(b), 92 Stat. 2682. In the interval between October 1, 1979 (the effective date of most substantive provisions of the 1978 Act) and April 1, 1984, the "courts of bankruptcy" created by the former Bankruptcy Act—*i.e.*, the district courts—were to be the "courts of bankruptcy for the purposes" of the 1978 Act. See Section 404(a), 92 Stat. 2683. Thus, Congress retained Section 1334 to serve as a jurisdictional underpinning for the district courts' continued exercise of bankruptcy

jurisdiction until the new jurisdictional provisions would take effect and the newly created bankruptcy courts would come into existence. See *White Motor Corp.* v. *Citibank, N.A.*, *supra*, slip op. 14.[10] Accordingly, the district courts retain original jurisdiction over bankruptcy proceedings under 28 U.S.C. 1334 until April 1, 1984, regardless of whether 28 U.S.C. (Supp. V) 1471(a) and (b) remain valid in the wake of *Marathon*.

3. Petitioner's contention (Pet. 23-28) that the district court lacked the power to promulgate the local rule is insubstantial. The rule is an appropriate exercise of the district courts' inherent authority to "prescribe rules for the conduct of their business." 28 U.S.C. 2071. As explained in the "emergency resolution" that prefaces the rule's substantive provisions (Pet. App. 28-29), "exceptional circumstances" existed in the wake of *Marathon* that required the promulgation of the rule to enable the district courts to carry out their bankruptcy duties until Congress enacts appropriate remedial legislation.[11]

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[10] Moreover, as the court of appeals explained in *White Motor*, even assuming that the 1978 Act operated as an implied repeal of Section 1334 during the transition period, principles of statutory construction suggest that the repealed section is " 'revived' to avoid a chaotic hiatus in the law" (slip op. 15) if the replacement jurisdictional grant is declared unconstitutional. See 1A C. Sands, *Sutherland Statutory Construction* § 23.24 (4th ed. 1973).

[11] These exceptional circumstances include:

> (1) The unanticipated unconstitutionality of the grant of power to bankruptcy judges in Section 241(a) of [the Bankruptcy Reform Act];
>
> (2) The clear intent of Congress to refer bankruptcy matters to bankruptcy judges;

Specific authority for the limited delegation by the district courts of their bankruptcy powers to bankruptcy judges is found in Bankruptcy Rule 927, which gives the district courts the power to adopt "rules governing practice and procedure under the Act." In addition, Section 105(a) of the Bankruptcy Reform Act of 1978, 11 U.S.C. (Supp. V) 105(a), gives bankruptcy courts the power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." This grant of authority must be read in light of Section 404(a) of the Bankruptcy Reform Act of 1978 (82 Stat. 2683), which denominates the district courts as "courts of bankruptcy" during the transition period. See also *White Motor Corp.* v. *Citibank, N.A.*, *supra*, slip op. 17 n.4. More generally, there has long been recognized an inherent power of Article III courts "to provide themselves with appropriate instruments required for the performance of their duties" (*Ex parte Peterson*, 253 U.S. 300, 312 (1920)), a power now codified in 28 U.S.C. 2071. Thus, as explained in greater detail by the Sixth Circuit in *White Motor Corp.* v. *Citibank, N.A.*, *supra*, slip op. 16-18, the district courts had statutory authority to adopt the interim emergency rule, and the Judicial Councils possessed the power to direct the adoption of the rule.[12]

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(3) The specialized expertise necessary to the determination of bankruptcy matters; and

(4) The administrative difficulty of the district courts' assuming the existing bankruptcy caseload on short notice.

[12] There is no merit to petitioner's contention (Pet. 24-26) that the interim emergency rule is invalid on the ground that it conflicts with Rules 53 and 83 of the Federal Rules of Civil

4. Petitioner also contends (Pet. 14-18) that the local rule is unconstitutional in light of *Marathon*. This contention is erroneous for reasons well stated by the Sixth Circuit in *White Motor Corp.* v. *Citibank*, *supra*, slip op. 18-21. The interim emergency rule carefully avoids the constitutional pitfalls of the statutory grant of jurisdiction to the bankruptcy courts struck down in *Marathon*. Specifically, the rule provides procedures that sufficiently restrict the power of bankruptcy judges so that " 'the essential atributes' of judicial power are retained in [an] Art. III court." *Marathon*, *supra*, slip op. 30 (plurality opinion), quoting *Crowell* v. *Benson*, 285 U.S. 22, 54 (1932).

Under the rule, none of the district courts' bankruptcy power is redelegated exclusively or finally to

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Procedure. While bankruptcy judges (or "referees") are sometimes analogized to masters, whose appointments are governed generally by Rule 53, the analogy is imprecise. Unlike the appointment of a master, the delegation to bankruptcy judges makes use of an entire system of bankruptcy courts already staffed with experienced judges who have specialized knowledge and experience in the handling of bankruptcy cases. Moreover, the system was created by Congress, not by the courts. Prior to 1978, cases were referred to bankruptcy judges in a manner similar to that provided under the local rule, and this system was never thought to violate the Rules of Civil Procedure. Bankruptcy judges, therefore, do not stand on the same footing as masters who serve pursuant to Rule 53, and the restrictions imposed upon the use of masters in *La Buy* v. *Howes Leather Co.*, 352 U.S. 249 (1957), are not applicable here.

Similarly, Rule 83, Fed. R. Civ. P. is not directly applicable here in light of the specific applicability of Bankruptcy Rule 927. In any event, the local rule is quite different from the rule invalidated in *Miner* v. *Atlass*, 363 U.S. 641 (1960) (see Pet. 24), and it is properly characterized as a procedural rule that is within the power of the district courts to promulgate.

bankruptcy judges. See *Marathon*, *supra*, slip op. 30-32. While the rule provides for the automatic reference to bankruptcy judges of all cases arising under Title 11 and all civil proceedings arising in or related to cases under Title 11, subsection (c) provides that the reference of any case may be withdrawn at any time upon motion of the court or any party (Pet. App. 29-30). If, after withdrawing a reference, the district court refers a matter back to a bankruptcy judge in whole or in part, it may do so "with instructions specifying the powers and functions that the bankruptcy judges may exercise" (*ibid.*). Thus, the rule provides the necessary procedural mechanism to ensure that any proceeding that a district court determines must be heard by an Article III court will in fact be heard by the district court.

Moreover, unlike the statutory provisions considered in *Marathon*, the rule (subsection (e)(2)(B)) provides that on appeals from bankruptcy judgments, the district court "may hold a hearing and may receive such evidence as appropriate and may accept, reject, or modify, in whole or in part, the order or judgment of the bankruptcy judge, and need give no deference to the findings of the bankruptcy judge" (Pet. App. 32). This provision for *de novo* review and hearing and the additional requirement that the district court "[a]t the conclusion of the review * * * enter an appropriate order or judgment" (*ibid.*) confirm the adjunct status of the bankruptcy judges and further support the constitutionality of their authority under the emergency rule. See *United States* v. *Raddatz*, 447 U.S. 667 (1980).

Finally, the emergency rule respects the constitutional concerns explicated in the plurality opinion in

Marathon by placing greater restrictions on bankruptcy judges when they handle related proceedings (defined in subsection (d)(3)(A); Pet. App. 31), which may or may not involve federal rights and laws, than when they handle core bankruptcy proceedings.[13] For related proceedings, the emergency rule (subsection (d)(3)(B)) specifically forbids bankruptcy judges from entering binding judgments and limits their power to "submit[ting] findings, conclusions, and a proposed judgment or order to the district judge, unless the parties to the proceeding consent to entry of the judgment or order by the bankruptcy judge" (Pet. App. 31).[14] In addition, the emergency rule provides (subsection (e)(2)(A)(iii)) that a district judge "shall review" any proposed order or judgment in a related proceeding "whether or not any notice of appeal or application for leave to appeal has been filed" (Pet. App. 32). These provisions confirm that, for related proceedings, the attributes of judicial power are retained in Article III district courts.

Thus, in the words of the Sixth Circuit (*White Motor Corp.* v. *Citibank, N.A.*, *supra*, slip op. 18):

> The interim rule does not violate the Constitution because the district courts retain primary jurisdiction over all bankruptcy proceedings.

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[13] It cannot seriously be contended that the emergency rule is invalid under the *holding* of *Marathon*, which is limited by the narrow scope of Justice Rehnquist's concurring opinion.

[14] Consensual reference of a civil matter to a non-Article III judicial officer for trial and entry of judgment does not violate Article III. See, *e.g.*, *Kimberly* v. *Arms*, 129 U.S. 512, 524 (1889); *Heckers* v. *Fowler*, 69 U.S. (2 Wall.) 123 (1864); *DeCosta* v. *Columbia Broadcasting System, Inc.*, 520 F.2d 499, 503-507 (1st Cir. 1975), cert. denied, 423 U.S. 1073 (1976).

> The bankruptcy courts have only derivative jurisdiction. They do not operate under an exclusive grant of jurisdiction as in § 1471(c) but rather derive their jurisdiction from the district courts as under the Chandler Act. The district courts retain control and primary responsibility for the conduct of bankruptcy proceedings. The interim rule implants sufficient mechanisms in the existing system to ensure that bankruptcy cases are resolved through a constitutionally valid process.

In sum, the district courts possess bankruptcy jurisdiction in the aftermath of *Marathon*, and by means of the interim emergency rule they are lawfully exercising that jurisdiction in a manner that adheres to Congress' intent as closely as constitutional limitations permit.[15] There is no reason for this Court to disturb the functioning of this interim system of bankruptcy administration pending congressional action to provide a permanent solution to the dilemma created by the constitutional deficiencies in the Bankruptcy Reform Act of 1978.

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[15] There is no merit to petitioner's contention (Pet. 17) that the interim emergency rule is invalid because it contravenes the congressional intent in enacting the 1978 Act "to eliminate the summary/plenary jurisdiction distinction by centralizing all bankruptcy jurisdiction in a single forum." Although it is true that Congress wished "to ensure adjudication of all claims in a single forum" (*Marathon*, *supra*, slip op. 37 n.40), it defies common sense to suggest that Congress, which has provided for continuous bankruptcy jurisdiction in the federal courts since the Bankruptcy Act of 1898, would prefer *no* bankruptcy jurisdiction in the aftermath of *Marathon* to the two-tiered bankruptcy jurisdiction that existed under prior law.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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